

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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June 10, 2003

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GSBCA 16053-RELO

In the Matter of JACK E. HUDSON

Jack E. Hudson, Avon, OH, Claimant.

Terry Burton, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veteran Affairs.

**BORWICK**, Board Judge.

Claimant, an employee of the Department of Veterans Affairs, moved to Cleveland, Ohio, incident to a permanent change of station. The agency had granted claimant relocation benefits and claimant purchased a house near Cleveland. Claimant sought agency reimbursement for certain real estate transaction costs he incurred in that purchase, and the agency denied reimbursement of some of those costs. Claimant appealed the denial to the Board. We grant the claim in part. Claimant is entitled to reimbursement of the environmental protection fee, but we sustain the agency on its denial of reimbursement for the remainder of the contested costs.

## Background

Claimant was transferred in the interest of the Government from Washington, D.C., to Cleveland, Ohio, and reported for duty at his new station on November 5, 2001. Claimant purchased a home in Independence, Ohio, and incurred real estate transaction expenses in connection with the purchase. Claimant sought reimbursement of \$3430.50 of those expenses.

The agency denied claimant reimbursement of the \$10 survey review fee as unallowable under the Federal Travel Regulation (FTR). The settlement sheet shows the survey review fee to be an additional settlement charge of the title company. The purpose of that fee is not otherwise explained. The agency did reimburse claimant \$131.50 for the survey itself.

The agency denied reimbursement of the \$14 wire fee, the \$75 tax service fee, and the \$300 commitment fee, charged by the mortgage lender, as unallowable finance charges under the Truth in Lending Act, 15 U.S.C. § 1605(a)(2000), and Regulation Z of the Federal Reserve Board, 12 CFR 226.

The agency denied claimant reimbursement of the \$80 mail/courier/overnight delivery fee because the fee was not included in a list of expenses made expressly allowable as miscellaneous fees reimbursable under the provisions of the FTR, nor was that fee similar in nature to fees that were expressly allowable. The settlement sheet lists that fee as incurred by the title company, but there is no explanation as to why that fee was incurred.

The agency initially denied claimant reimbursement of the \$75 environmental protection fee pending clarification of the purpose of the fee. However, based upon a letter from the mortgage lender that the fee is required as a condition of the mortgage, the agency now agrees that the fee is reimbursable.

The agency denied claimant reimbursement of \$438.50 of the \$688.50 claimed for mortgage title insurance, granting \$250 reimbursement for that portion identified in the settlement sheet specifically as lender's title insurance. Claimant secured a letter from claimant's mortgage lender, which states that it is the policy of all mortgage lenders and this particular mortgage company to require title insurance for a prospective mortgage. The mortgage company then says in the letter:

In the mortgage that was executed by [the mortgage lender to claimant] it required a LENDER'S COVERAGE OF TITLE INSURANCE (ALTA) policy. All mortgages made by the [mortgage company] must have this form of title insurance.

The agency denied reimbursement of \$250 for home inspection and the \$135 radon test pending a statement from the settlement company or lender that those services were required as a precondition for completing the residence transaction. Claimant's mortgage lender advised that it was not a lending requirement to have home inspections or radon tests as prerequisites for a mortgage, although it was customary to obtain private home inspections and radon tests since some communities in the area were prone to radon contamination.

### Discussion

The agency correctly denied claimant reimbursement of the survey review fee. The FTR allows reimbursement of cost of surveys, cost of preparing drawings and plats when required for legal or financing purposes, and similar expenses, as miscellaneous expense items if the costs are customarily paid by the purchaser and the amount paid does not exceed the amounts customarily charged in the locality of the residence. 41 CFR 302-6.2(c) (2001).<sup>1</sup> We have allowed reimbursement of the cost of the survey itself under that provision of the FTR. Kathleen M. Lewis, GSBCA 15613-RELO, 01-2 BCA ¶ 31,616. Here, there is no basis in the record to determine the purpose of the survey review, i.e., whether the survey review was a step in preparing drawings or plats required for legal or

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<sup>1</sup> The version of the FTR in effect when claimant reported for duty at his new official station determines claimant's entitlement in this matter and we refer to that version of the FTR. See 41 CFR 302-1.3(d), 1.4(l) (2001) and 41 CFR 302-2.3 (2002).

financing purposes. Nor does the record explain whether it was customary in the community for a purchaser to pay that fee. The record does not establish whether the charge was an incidental charge for a required service and thus reimbursable under 41 CFR 302-6.2(f). Claimant has the burden of establishing entitlement to payment and has not met the burden here. See Larry J. Wakefield, GSBGA 15823-RELO, 03-1 BCA ¶ 32,066.

The agency correctly denied reimbursement of the \$14 wire fee, the \$75 tax service fee, and the \$300 commitment fee as unallowable finance charges under the Truth in Lending Act and Regulation Z. Wire fees and tax service fees are considered finance charges under the Truth in Lending Act and Regulation Z and are not reimbursable. 41 CFR 302-6.2(d)(2)(v); Daniel H. Coney, GSBGA 15506-RELO, 01-2 BCA ¶ 31,610. A commitment fee is a fee imposed by the lender in order to set aside funds for the borrower, or as a "lock-in" fee that a consumer pays to bind the lender to make the mortgage. See David P. Brockelman, GSBGA 14604-RELO, 98-2 BCA ¶ 29,971. Consistent with decisions of the General Accounting Office, we have determined such fees to be unallowable finance charges. Brockelman (citing Leslie E. Russell Jr., B-217189 (May 6, 1985)).

The agency denied claimant reimbursement of the \$80 mail/courier/overnight delivery fee because that fee was not expressly listed as a miscellaneous fee and was not similar to a fee that was expressly listed. 41 CFR 302-6.2(d)(1)(i)-(vi). We have, however, allowed courier fees under 41 CFR 302-6.2(f) as incidental fees for a required service when a claimant could establish that the fees were for services that the claimant or someone working with the claimant such as an attorney procured and that the services were absolutely necessary to complete the purchase of the residence and not for the claimant's personal convenience. Coney (citing Larry D. Gatewood, GSBGA 15343-RELO, 01-1 BCA ¶ 31,211.) However, the lender's courier charges are part of the lender's cost of doing business and are regarded as unallowable finance charges. Coney. Claimant has not met his burden of establishing that the charge in this instance is reimbursable under 41 CFR 302-6.2(f). Although the fee was a charge of the title company, there is no explanation of why the fee was charged or why use of a courier was necessary to complete the purchase transaction.

The agency correctly determined, in light of the mortgage lender's letter, that the \$75 environmental protection fee is reimbursable, since the fee was required by the lender as a condition of the sale. See 41 CFR 302-6.2(d)(1)(xi).

We turn to the title insurance. The cost of mortgage title insurance for the protection of, and required by, the lender is reimbursable under the FTR. An owner's title insurance policy is also reimbursable, provided the policy is a prerequisite to financing or the transfer of the property or if cost of the owner's title insurance is inseparable from insurance that is a prerequisite for financing or the transfer of the property. 41 CFR 302-6.2(d)(1)(viii), (ix). Here, according to the mortgage company, only the lender's coverage of title insurance was a prerequisite to financing. Claimant is entitled only to the \$250.

Fees for radon and home inspection tests are only reimbursable if required by federal, state, or local law or by the mortgage lender. 41 CFR 302-6.2(d)(1)(xi); Lewis. Here the

mortgage lender confirms that such inspection is a matter of custom and not required by law or by the mortgage lender.

The Board grants the claim in part; claimant is entitled to reimbursement of the \$75 environmental protection fee. The remainder of the claim is denied.

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ANTHONY S. BORWICK  
Board Judge